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Supreme Court of the United States

No. 573—October Term, 1940.

CHARLOTTE CROSS JUST and ANNE ELISE GRUNER,
Petitioners,
against
ALMA CHAMBERS, as Executrix of the Estate of HENRY C. YEISER, JR., as owner of the American Yacht *Friendship II*,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

PETITION OF RESPONDENT FOR REHEARING.

RAYMOND PARMER,
Proctor for Respondent.

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PETITION OF RESPONDENT FOR REHEARING.

Respondent, Alma Chambers, as Executrix, respectfully petitions for a rehearing. The unanimous opinion of this Court was handed down March 3, 1941.

This petition is filed because there are two grounds on which the Circuit Court of Appeals based its decision, which are sufficient to support it, and which were not considered by this court. This, it seems, occurred by reason of a demonstrable misinterpretation of the holding of the Circuit Court of Appeals and of the position of the respondent in respect of the two grounds involved.

This petition does not discuss the points considered and decided finally in the opinion of this court.

1. The Issues Which Were Not Considered by This Court, Which Are Sufficient to Support the Decision Below, and on Which the Decision Below Was Based:

This case involved torts on navigable waters within the territorial limits of Florida. Maritime law alone gave the

causes of action, but the maritime law did not provide for survival of the causes of action.* Four days after the accrual of the cause of action the wrongdoer died. Thereafter, an executrix was appointed in Ohio. Thereafter, the executrix commenced this action in Florida. This court has held that the causes of action survived against the Ohio executrix of the wrongdoer's estate because a "local statute, as construed by the Supreme Court of the State" provides for the survival of causes of action against a wrongdoer's estate.

The two grounds of the decision of the Circuit Court of Appeals, which this court, seemingly, did not consider, are:

1. That there is not any "local statute, as construed by the Supreme Court of the State", which provides for the survival of causes of action against a wrongdoer's estate. It is the local common law, as construed by the Supreme Court of the State, which so provides.

2. That, as a matter of *construction,* a survival law of a state, whether embodied in its common law or in its statutes, applies only to a cause of action already created by the laws of that state. In other words, its normal scope does not include causes of action already created by the laws of another territorial jurisdiction, including the territorial jurisdiction of the admiralty.

2. THE APPARENT REASONS WHY THE ABOVE MENTIONED MATTERS WERE NOT CONSIDERED BY THIS COURT:

This court said on page 2:

"There is no question that there was a maritime tort. There is also no question that the injury

* Though the basis for the rule of abatement may be slender in the decided cases, as this court has observed, there is nothing to the contrary, as the Circuit Court said at 113 F. (2d) 108.

> occurred within the territorial limits of Florida and that under the local statute, as construed by the Supreme Court of the State, the causes of action survived against the wrong-doer's estate. This was recognized by the Circuit Court of Appeals and does not appear to be disputed here. 113 F. (2d) p. 107."

There is not in this case such a local statute.

Every member of the Circuit Court of Appeals, including the dissenting judge, recognized it. The dissenting judge said that, in the absence of such a statute, the common law of the state was applicable. 113 F. (2d) 110. The majority held that the common law of Florida was not applicable.

This court has misinterpreted the meaning of the majority opinion below* and has upset a decision of the majority by assuming the existence of a statute which even the dissenting judge recognized was not in the case.

The parties did not say that there was such a statute. The petitioners said that "In Florida (by common law and by statute) a cause of action for personal injury *survives* the death of either the party injured or the tort feasor." Brief submitted with petition for certiorari, page 21, Supplemental brief, page 20. This was true because the Florida survival statute makes a personal injury cause of action survive in the case of the death of the party injured, (*State* v. *Parks* (1937) 129 Fla. 50), whereas the Florida common law makes it survive in the case of the death of the wrongdoer. (*Waller* v. *First Savings & Trust Co.* (1931) 103 Fla. 1025).

And when petitioners said that Florida common law makes causes of action survive they meant that common law and not the statute does so in the case of the death

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* To wit: the meaning of the word "statute" as used at 113 F. 2d 107. Compare 103 Fla. 1025 at 1034 and 1044.

of the wrongdoer. This follows from *State* v. *Parks* (1937), 129 Fla. 50, at 55 and 56, where the Florida statute was construed as abolishing abatement in the common law of Florida, to wit: the common law providing for abatement in the case of the death of the injured person.

This was respondent's position, and respondent's proctor so informed the court during the course of the argument.

This court's misapprehension was not confined to the holding below as to the provisions of Florida law. It extended to the construction which the Circuit Court put on that law.

This court said that by virtue of the application of the Florida statute to this case, the causes of action here involved survived against the wrongdoer's estate. This, it is submitted, is the same as saying that the Circuit Court recognized that the scope of the Florida statute was such that it applied to a maritime cause of action, or that the Florida legislature so intended in enacting it.

This court went on to hold that Florida had the constitutional power to pass a statute having such a scope. We are not concerned with that here. We are concerned solely with the statement that the Circuit Court recognized that such was the scope of the Florida law.

The Circuit Court of Appeals said, at 113 F. (2d) 108:

> "The law of the place of the wrong determines whether the claim for damages survives the death of the wrongdoer. Ormsby *v.* Chase, 290 U. S. 387. The place of the wrong here to be considered is shipboard on navigable waters rather than the territorial limits of Florida."

In these words the Circuit Court, relying on *Ormsby* v. *Chase,* 290 U. S. 397, held, as a matter of construction,

that the survival law of Florida, whatever its source, did not include within its scope these maritime causes of action, notwithstanding that they had arisen within "the territorial limits of Florida." They were as far removed from the intended scope of the Florida survival law as the New York causes of action were removed from the intended scope of the Pennsylvania survival law in the case of *Ormsby* v. *Chase*.

Respondent, both by brief and argument, disputed the applicability of Florida Law in the above sense. Point 2 of respondent's brief in opposition to the petition for certiorari, which was accepted by the court at the argument as respondent's main brief, stated, page 26:

> "A STATE LAW PROVIDING FOR THE SURVIVAL OF A CAUSE OF ACTION IN PERSONAM FOR PERSONAL INJURIES DOES NOT APPLY TO A MARITIME CAUSE OF ACTION.

The above was the holding of the Circuit Court. There were two reasons which required it. The first* was that, since the cause of action was given by the Federal maritime law, it was for Congress alone to determine when it should abate. This was a necessary result of this court's decision in *Ormsby* v. *Chase*, 290 U. S. 387.

Without question, state survival acts are inapplicable to rights granted by a Federal statute.

In *Michigan Central Railroad* v. *Vreeland*, 227 U. S. 59, it was said at p. 67:

> 'The statutes of many of the states expressly provide for the survival of the right of action which the injured person might have prosecuted if he had survived. But unless this Federal statute which declares the liability here asserted provides that the right of action shall survive the death of the injured

* The second reason, a supposed lack of constitutional power, was the one with which this court dealt in its opinion.

> employe, it does not pass to his representative, notwithstanding state legislation. The question of survival is not one of procedure, 'but one which depends on the substance of the cause of action.' *Schreiber* v. *Sharpless,* 110 U. S. 76, 80; *Martin* v. *Baltimore & Ohio R. R. Co.,* 151 U. S. 673.' "

Respondent's brief then went on to refer to cases in which maritime law had been stated to be the equivalent of a Federal statute and concluded this part of the argument with this sentence, Brief on certiorari, page 29:

> "Therefore, on plain jurisdictional grounds the survival of a cause of action granted by the maritime law must depend on the will of Congress alone."

Since this court has dealt with the case as if the only point involved was the constitutional power of Florida, and has not referred in its opinion to *Ormsby* v. *Chase,* 290 U. S. 397, nor to the Circuit Court's reliance on the doctrine of that case in support of its decision, it is inferable that this court was under a misapprehension as to the holding of the Circuit Court of Appeals and respondent's argument in that regard.

The respondent, in its "jurisdictional" argument, did not claim that there was some general restriction on the power of the states to legislate in the maritime jurisdiction.

However, the respondent did argue that there is a special and particular restriction which attends all state legislation, irrespective of the power of the states to legislate within the maritime jurisdiction. This restriction comes from the subject matter of the legislation itself.

It was respondent's contention, and the Circuit Court's holding, that such a restriction is implicit in laws having to do with the survival of causes of action.

As a matter of construction (if necessary, statutory construction) survival laws do not create rights and do not affect rights already created by another jurisdiction.

Therefore, it was because the doctrine of *Ormsby* v. *Chase,* and the decision of the Circuit Court relying on it, had nothing to do with the constitutional point relating to the power of the states as affected by the requirement of uniformity, that, on the argument, counsel for the respondent said, in answer to a question of the Chief Justice, that the constitutional point was not the only point in the case, that, indeed, it was not the point principally relied on, and that the point principally relied on was this: that the jurisdiction which creates the cause of action is the one which decides how long it shall endure.

Stated conversely, laws which provide for survival do not affect causes of action already created by the law of another jurisdiction.

POINT III.

THE ISSUES INADVERTENTLY NOT CONSIDERED BY THIS COURT ARE SUBSTANTIAL AND INDEPENDENTLY WILL SUSTAIN THE DECISION OF THE CIRCUIT COURT OF APPEALS.

If, as the Circuit Court and the dissenting judge held, the Florida law with respect to the survival of a cause of action against a wrongdoer is not statutory, then the decree below was right for two reasons. In the first place, this court has held that it is the maritime law and not the common law which governs torts occurring on navigable waters. *Workman* v. *New York City,* 179 N. Y. 552. Cf. *Atlantic Transport Co.* v. *Imbrovek,* 234 U. S. 52, at 62. In the second place, since the Florida law relates to survival of causes of action, it does not affect causes of action already

created by the law of another jurisdiction. *Ormsby* v. *Chase,* 290 U. S. 397.

Furthermore, even if it be assumed that the Florida law with respect to the survival of causes of action against a wrongdoer is statutory, and, therefore, that the purpose of such a statute might be either to change the nature of a cause of action arising on the water and already existing, or to create a new one against a person (executrix) who has never been in Florida, *Ormsby* v. *Chase* holds, at the very least, that there is a question as to whether such a result is intended by such legislation.

The doctrine of *Ormsby* v. *Chase* is not one involving the constitutional or maritime considerations discussed in the opinion of this court. It is a distinct doctrine applicable to laws which provide for the survival of causes of action.

The doctrine of that case, in the words of Mr. Justice Butler, who wrote the opinion, is as follows:

> "But the law of the place of the wrong determines whether the claim for damages survives the death of the wrongdoer. *Orr* v. *Ahern,* 107 Conn. 174; 139 Atl. 691. *Sumner* v. *Brown,* 312 Pa. 124; 167 Atl. 315. *Davis* v. *Mills,* 194 U. S. 451, 454. Assuming Ormsby's negligence as alleged, the New York law, upon the happening of the accident, gave plaintiff a right of action. But the same law limited the right and made it to end upon the death of the tort feasor. As actions for personal injuries are transitory, she might have sued him in Pennsylvania. *Tennessee Coal, I. & R. Co.* v. *George,* 233 U. S. 354. But when she sued she had no claim to enforce. *Hyde* v. *Wabash, St. L. & P. Ry. Co.,* 61 Ia. 441, 443; 16 N. W. 351. She could derive no substantive right from the Pennsylvania survival statute. See *Sumner* v. *Brown, supra.*"

In citing a Pennsylvania case, *Sumner* v. *Brown,* 312 Pa. 124, Mr. Justice Butler indicated that it was sufficient for the decision of *Ormsby* v. *Chase* that the intent of the Pennsylvania statute was not to affect conduct which had taken place in New York. Other cases cited by Mr. Justice Butler are state court cases in which a similar construction was placed on such legislation. *Davis* v. *New York & New England Railroad,* 143 Mass. 301, at 304, and *Needham* v. *Grand Trunk Railroad Company,* 38 Vt. 294, at 308.

Mr. Justice Holmes, in *Western Union Telegraph Co.* v. *Brown,* 234 U. S. 542, also cited by Mr. Justice Butler, expressed a cognate idea when he said, at page 547:

> "The injustice of imposing a greater liability than that created by the law governing the conduct of the parties at the time of the act or omission complained of is obvious;"

Therefore, wholly apart from questions having to do with the power of Florida, under the Constitution or otherwise, there was first a question of construction as to whether Florida ever *intended* by its common law (or statute if there were one) to create any rights at all as distinguished from changing the nature of rights already existing; and, second, a question of construction as to whether Florida ever *intended* by its common law (or statute if there were one) to do anything at all with respect to conduct which, although it occurred within the territorial jurisdiction of Florida, nevertheless occurred also within the territorial jurisdiction of Admiralty, which had already attached liability to the person responsible for the conduct; and, third, if it intended to do anything at all, what was it.

In relying on *Ormsby* v. *Chase* the Circuit Court of Appeals construed the law of Florida as not intended to apply to such a case as this. This was enough to sup-

port the decision. No Florida decision has been cited, nor have we been able to find any, to the effect that the intent of Florida law is otherwise. This court did not say that the construction which the Circuit Court of Appeals put on the Florida law was wrong.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the decree of the Circuit Court of Appeals be, upon further consideration, affirmed.

Respectfully submitted,

RAYMOND PARMER,
Proctor for Respondent.

I, RAYMOND PARMER, proctor for the above named respondent, do hereby certify that the foregoing petition for the rehearing of this cause is presented in good faith and not for delay.

RAYMOND PARMER,
Proctor for Respondent.

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SUPREME COURT OF THE UNITED STATES.

No. 373.—October Term, 1940.

Charlotte Cross Just and Anne Elise Gruner, Petitioners,
vs.
Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., as owner of the American Yacht "Friendship II".

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 3, 1941.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Respondent, as executrix of the estate of Henry C. Yeiser, Jr., owner of the yacht "Friendship II", brought this proceeding in admiralty for limitation of liability. 46 U. S. C. 183. Petitioners presented claims for damages for personal injuries due to carbon monoxide gas poisoning alleged to have occurred on board the vessel. It was cruising at the time within the territorial limits of the State of Florida and petitioners were guests of the owner. On the owner's death, petitioners' claims were filed against his estate.

Upon the facts the District Court found liability to the claimants and denied limitation upon the ground of neglect of duty by the owner. The court held that under a statute of Florida the claimants' causes of action survived the owner's death.

Upon appeal from the interlocutory decree (28 U. S. C. 227) the Circuit Court of Appeals ruled that all the findings of fact made by the District Judge were supported by the evidence; that, as the injuries thus proved were not occasioned without the knowledge or privity of the shipowner, respondent could not have limitation; that as the ship was at fault as well as the owner the causes of action *in rem* survived the owner's death and the claimants on that ground might recover up to the value of the ship, but that under the governing principles of admiralty law the personal liability of the owner did not survive. 113 F. (2d) 105. Because of the importance of the question as to the enforceability in admiralty of the claims for personal injuries against the estate of the deceased tortfeasor, we granted certiorari. October 21, 1940.

In support of the judgment of the Circuit Court of Appeals, respondent asks us to review the evidence with respect to the cause of the claimants' injuries and the breach of duty by the shipowner, contending that the evidence was insufficient to support the findings. Applying the well-established rule, we accept the concurrent findings of the courts below upon these matters (*Texas & New Orleans R. R. Co.* v. *Railway Clerks,* 281 U. S. 548, 558) and we confine our attention to the question of the survival of the causes of action.

There is no question that there was a maritime tort. There is also no question that the injury occurred within the territorial limits of Florida and that under the local statute, as construed by the Supreme Court of the State, the causes of action survived against the wrongdoer's estate. This was recognized by the Circuit Court of Appeals, and does not appear to be disputed here. 113 F. (2d) p. 107. Compiled General Laws of Florida (1927), Section 4211; *Waller* v. *First Savings & Trust Co.,* 103 Fla. 1025, 1047, 1049; *Granat* v. *Biscayne Trust Co.,* 109 Fla. 485, 488; *State ex rel. Wolfe Construction Co.* v. *Parks,* 129 Fla. 50, 56, 57.

The statutory provision for limitation of liability, enacted in the light of the maritime law of modern Europe and of legislation in England, has been broadly and liberally construed in order to achieve its purpose to encourage investments in shipbuilding and to afford an opportunity for the determination of claims against the vessel and its owner. *Norwich Company* v. *Wright,* 13 Wall. 104, 121. It looks to a complete disposition of what may be a "many cornered controversy", thus applying to proceedings *in rem* against the ship as well as to proceedings *in personam* against the owner, the limitation extending to the owner's property as well as to his person. *The City of Norwich,* 118 U. S. 468, 503; *Hartford Accident Co.* v. *Southern Pacific Co.,* 273 U. S. 207, 216. It applies to cases of personal injury and death as well as to cases of injury to property. *Butler* v. *Boston Steamship Co.,* 130 U. S. 527, 552; *The Albert Dumois,* 177 U. S. 240, 259. The limitation extends to tort claims even when the tort is non-maritime. *Richardson* v. *Harmon,* 222 U. S. 96.

When the jurisdiction of the court in admiralty has attached through a petition for limitation, the jurisdiction to determine claims is not lost merely because the shipowner fails to establish

his right to limitation. We have said that the court of admiralty in such a proceeding acquires the right to marshal all claims, whether of strictly admiralty origin or not, and to give effect to them by the apportionment of the *res* and by judgment *in personam* against the owner, so far as the court may decree. And that, if Congress has this constitutional power, it necessarily follows, as incidental to that power, that it may furnish a complete remedy for the satisfaction of those claims by distribution of the *res* and by judgments *in personam* for deficiencies against the owner, if he is not released by virtue of the statute. *Hartford Accident Co.* v. *Southern Pacific Co., supra,* p. 217. While it is recognized that the equitable rule for retaining jurisdiction in order completely to dispose of a cause does not usually apply in admiralty, the proceeding for limitation of liability is different from the ordinary admiralty suit and, by reason of the statute and rules governing it, the court of admiralty has authority to grant an injunction and thus bring litigants into the admiralty court. There is thus jurisdiction to fulfill the obligation to do equity to claimants by furnishing them a complete remedy although limitation is refused. *Id.,* p. 218.

But respondent contends that to permit recovery upon the claims here in question would do violence to a precept of the admiralty law that causes of action for personal injury die with the person. Respondent argues that the source of this principle was not the common law[1] but the civil law[2] and that it should be regarded as an integral part of the maritime law, considered as an independent body of law, and hence can be changed only by Congress which has not acted.[3]

Whether the particular rule now invoked is so securely based in our maritime law[4] that a different one can be established only by legislation and not by the exercise of the judicial power re-

[1] As to the rule in the common law, see Holdsworth's History of English Law, Vol. 3, pp. 576-578.

[2] Inst. Just. Lib. IV, Tit. XII, Cooper, p. 364, Sandars, p. 476.

[3] The "Death on the High Seas" Act, 46 U. S. C. 761-768, is not applicable, as it occupies a limited field and even as to wrongful death provides that the provisions of state statutes shall not be affected.

[4] The rule of the non-survival of a cause of action against a deceased tortfeasor has but a slender basis in admiralty cases in this country. See Crapo *v.* Allen, 6 Fed. Cas. (No. 3360) 763; Cutting *v.* Seabury, 1 Sprague 522, 525; In re Statler, 31 F. (2d) 767, 36 F. (2d) 1021; Cortes *v.* Baltimore Insular Line, 287 U. S. 367, 371. The precise question here presented does not seem to have been authoritatively determined.

sponding to present standards of justice,[5] we need not now consider. For, while the injury occurred on navigable waters, these were within the limits of Florida whose legislation provided that the cause of action should survive. And it is not a principle of our maritime law that a court of admiralty must invariably refuse to recognize and enforce a liability which the State has established in dealing with a maritime subject. On the contrary, there are numerous instances in which the general maritime law has been modified or supplemented by state action, as e.g. in creating liens for repairs or supplies furnished to a vessel in her home port. *The Lottawanna,* 21 Wall. 558, 580; *The J. E. Rumbell,* 148 U. S. 1, 12.[6] With respect to maritime torts we have held that the State may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation. *The City of Norwalk,* 55 Fed. 98; *Western Fuel Company* v. *Garcia,* 257 U. S. 233, 242; *Great Lakes Company* v. *Kierejewski,* 261 U. S. 479; *Vancouver Steamship Co.* v. *Rice,* 288 U. S. 445.[7]

This is illustrated, in the cases cited, by the effect given in admiralty to state legislation creating liability for wrongful death. The leading continental States of Europe, whose jurisprudence was developed from the civil law have given a remedy in such a case,[8] but a right of action was denied by the common law and likewise by the admiralty in England. And this Court, upon an elaborate review of the decisions, concluded that no suit for wrongful death would lie "in the courts of the United States under the general maritime law". *The Harrisburg,* 119 U. S. 199, 213. See, also, *The Corsair,* 145 U. S. 335, 344. The absence of a federal or state statute giving a right of action was emphasized. But when a State, acting within its province, has created liability for wrongful death, the admiralty will enforce it.

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[5] See The Lottawanna, 21 Wall. 558, 572-574.

[6] Many other instances are listed in The City of Norwalk, 55 Fed. 98, 106, 107.

[7] See, also, Grant Smith-Porter Co. *v.* Rohde, 257 U. S. 469, 477, 478; Millers' Underwriters *v.* Brand, 270 U. S. 59, 64. Compare Southern Pacific Co. *v.* Jensen, 244 U. S. 205, 216, 220; Chelentis *v.* Luckenbach S.S. Co., 247 U. S. 372; Knickerbocker Ice Co. *v.* Stewart, 253 U. S. 149; Robins Dry Dock Co. *v.* Dahl, 266 U. S. 449.

[8] Hughes on Admiralty, Chap. X, Secs. 108-110, pp. 224-226. See, also, The Harrisburg, 119 U. S. 199, 212, 213.

There was a careful and comprehensive exposition of this subject by Judge Addison Brown in *The City of Norwalk, supra,* decided shortly after *The Corsair, supra.* He observed that if it was not within the power of the State to create such a liability in a maritime case, the statutes of the majority of the States would be void so far as they related to deaths in cases arising on navigable waters. But the validity of judgments in the state courts giving damages in such cases, and the validity of the statutes on which they rested, had been sustained. *Steamboat Company* v. *Chase,* 16 Wall. 522; *Sherlock* v. *Alling,* 93 U. S. 99. The grounds of objection to the admiralty jurisdiction in enforcing liability for wrongful death were similar to those urged here; that is, that the Constitution presupposes a body of maritime law, that this law, as a matter of interstate and international concern, requires harmony in its administration and cannot be subject to defeat or impairment by the diverse legislation of the States, and hence that Congress alone can make any needed changes in the general rules of the maritime law. But these contentions proved unavailing and the principle was maintained that a State, in the exercise of its police power, may establish rules applicable on land and water within its limits, even though these rules incidentally affect maritime affairs, provided that the state action "does not contravene any acts of Congress, nor work any prejudice to the characteristic features of the maritime law, nor interfere with its proper harmony and uniformity in its international and interstate relations". It was decided that the state legislation encountered none of these objections. The many instances in which state action had created new rights, recognized and enforced in admiralty, were set forth in *The City of Norwalk,* and reference was also made to the numerous local regulations under state authority concerning the navigation of rivers and harbors. There was the further pertinent observation that the maritime law was not a complete and perfect system[9] and that in all maritime countries there is a considerable body of municipal law that underlies the maritime law as the basis of its administration. These views find abundant support in the history of the maritime law and in the decisions of this Court.

In *The Hamilton,* 207 U. S. 398, there was a proceeding in admiralty for limitation of liability in respect of a collision on the

[9] See The Blackheath, 195 U. S. 361, 365.

high seas, both vessels belonging to corporations of the State of Delaware. The Court held that a Delaware statute giving damages for wrongful death was a valid exercise of the legislative power, and that there was thus created a personal liability of the owner to the claimants which admiralty would respect. Moreover, as the case was one for limitation of liability, the Court noted that the federal statute had enabled the owner to transfer liability to a fund and to the exclusive jurisdiction of admiralty and hence "all claims to which the admiralty does not deny existence" must be recognized. In *La Bourgoyne,* 210 U. S. 95, 139, also a limited liability proceeding, the reasoning of *The Hamilton* was followed in the ruling that, as the case was one of a French vessel and the law of France gave a right of action for wrongful death, our court of admiralty would enforce the claim.

Finally, in *Western Fuel Company* v. *Garcia, supra,* the Court deemed it to be the logical result of prior decisions that where death "results from a maritime tort committed on navigable waters within a State whose statutes give a right of action on account of death by wrongful act, the admiralty courts will entertain a libel *in personam* for the damages sustained by those to whom such right is given". The libel there failed solely because suit was barred by the state statute of limitations. And the criterion applied in determining the validity and effect of the state legislation was set forth in substantially the same terms as those stated in *The City of Norwalk,* above quoted. *Western Fuel Company* v. *Garcia, supra,* p. 242.

This criterion is manifestly not limited to cases of wrongful death. It is a broad recognition of the authority of the States to create rights and liabilities with respect to conduct within their borders, when the state action does not run counter to federal laws or the essential features of an exclusive federal jurisdiction. See *Minnesota Rate Cases,* 230 U. S. 352, 402-410. We see no reason why, under this test, the Florida rule in providing for the survival of a cause of action against a deceased tortfeasor for injuries occurring on navigable waters within the limits of the State should not be applied.

Respondent argues that, in relation to wrongful death, the maritime law had left the matter "untouched" (*The Harrisburg, supra*) and thus the state law was admitted to supplement the maritime

law, while in the instant case there is a positive rule of admiralty against the survival of the cause of action. That is, in the one case, there is said to be a "void" in the maritime law, which the state law may fill, while in the other there is an attempt to modify an existing principle. This is a subtlety which we think does not merit judicial adoption. The admiralty rule in the case of wrongful death can be stated either negatively or positively, and the result does not turn on the mere mode of expression. The pith of the matter is that the maritime law, as we conceived it, did not permit recovery, and in the same sense, in substance, the maritime law denied the survival of causes of action against a deceased tortfeasor. The maritime law would be supplemented or modified by state legislation in the one case as truly as in the other, and either supplement or modification is permissible in accordance with the accepted criterion.

Our decisions in the wrongful death cases also meet the further argument which is addressed to lack of uniformity. For whatever lack of uniformity there may be in giving effect to the state rule as to survival is equally present when the state rule is applied to wrongful death, or, for that matter, in any case when state legislation is upheld in its dealing with local concerns in the absence of federal legislation. Uniformity is required only when the essential features of an exclusive federal jurisdiction are involved. But as admiralty takes cognizance of maritime torts, there is no repugnancy to its characteristic features either in permitting recovery for wrongful death or in allowing compensation for a wrong to the living to be obtained from a tortfeasor's estate. *A fortiori*, in applying the established rules as to proof of claims in limitation proceedings, petitioners, brought into admiralty, were entitled to have their claims against the shipowner's estate heard and determined.

The judgment of the Circuit Court of Appeals is reversed and that of the District Court is affirmed.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.